

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Gap, Inc.)
Dist. 4, Map 125, Control Map 125, Parcel 39.00,) Sumner County
S.I. 000)
Industrial Property)
Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$2,083,000	\$84,200,000	\$86,283,000	\$34,513,200

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on February 6, 2007 in Gallatin, Tennessee. In attendance at the hearing were registered agent Cameron A. Moore, Sumner County Property Assessor's representative Jesse Denton, and Derrick Hammond, an appraiser with the Division of Property Assessments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of the Gap Distribution Center located at 100-300 Gap Boulevard in Gallatin, Tennessee. Subject facility is comprised of a 127.4 acre site improved with three separate buildings containing approximately 2,332,604 gross square feet.¹ Subject buildings were constructed between 1996 and 1999 and have ceiling heights as high as approximately 40 feet.²

The taxpayer contended that subject property should be valued at \$54,306,700. In support of this position, Mr. Moore relied primarily on a 59 page document (exhibit #1) he referred to as an “ad valorem tax report.” Mr. Moore concluded that the sales comparison and income approaches supported value indications of \$55,527,600 and \$51,880,000 respectively and should be correlated at \$54,306,700. Mr. Moore’s analysis assumed that the current use of subject property represents the highest and best use.

The assessor contended that subject property should be valued at \$79,871,800. In support of this position, the cost approach as summarized by a revised property card (exhibit #4) was introduced into evidence. Mr. Hammond essentially testified that in his opinion the

¹ Mr. Moore's written analysis (exhibit #1) indicates subject property has four buildings whereas the assessor's property record card (exhibit #4) reflects three buildings. It appears that the parties have simply treated the addition to building #1 differently for descriptive purposes. For ease of understanding, the administrative judge will treat the addition in the same manner as the assessor. The administrative judge finds that a prospective buyer would presumably treat the addition and original structure as constituting a single building.

² The testimony was in conflict insofar as the ceiling height was referred to as being 40-feet and 42-feet at different times.

highest and best use of the subject property would be to subdivide the acreage and sell off the buildings individually.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$76,527,700. As will be discussed below, the administrative judge finds that the assessor's cost approach should initially receive greatest weight. However, the administrative judge finds that if the highest and best use of subject property is to sell off the buildings individually as assumed by Mr. Hammond, a typical buyer would not need a 40-foot ceiling height. The administrative judge finds that subject buildings should be depreciated an additional five percent (5%) to account for the loss in value attributable to the incurable functional obsolescence caused by this superadequacy.

Since the taxpayer is appealing from the determination of the Sumner County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the very first paragraph of Mr. Moore's report provides in relevant part as follows:

The appraiser is representing the taxpayer's interest and is providing specialized services to facilitate the taxpayer's objectives. This service may include valuation work and

analysis work. Said appraiser is not acting as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion. . . .

In response to the administrative judge's query, Mr. Moore stated that his objective was to achieve the "target value" provided by the taxpayer. Mr. Moore testified that his opinion of value differed from the taxpayer's target value. Despite asking Mr. Moore several times what constituted his opinion of market value, Mr. Moore never provided the administrative judge with a meaningful response let alone a figure.

In response to another query by the administrative judge, Mr. Moore stated that his analysis was not manipulated in order to arrive at the target value. The administrative judge finds that such testimony strains credulity.

The administrative judge finds that by his own admission, Mr. Moore is biased and presumably has a direct or indirect financial interest in the outcome of the appeal. The administrative judge finds that the testimony of such a representative or witness lacks probative value and must be rejected in its entirety.

Even if the foregoing problem did not exist, the administrative judge would still give no weight to Mr. Moore's analysis for several reasons. First, the administrative judge finds that it is virtually impossible to value subject property without appraising it. Second, the administrative judge finds that Mr. Moore did not even consider the cost approach. Third, the administrative judge finds that although Mr. Moore purported to adjust his comparables, there is nothing in the record such as an adjustment grid to indicate what adjustments were made.³ Fourth, given the lack of a cost approach and an incomplete sales comparison approach, Mr. Moore's analysis consists of little more than a minimally substantiated income approach. The administrative judge finds that Mr. Moore's income approach cannot provide a basis of valuation standing by itself.

The administrative judge would normally affirm the current appraisal of \$86,283,000 based upon the presumption of correctness attaching to the decision of the Sumner County Board of Equalization. In this case however, the assessor has conceded that the cost approach which was the basis for the value adopted by the Sumner County Board of Equalization was in error. Given that admission, the administrative judge would typically adopt the assessor's revised cost approach insofar as it establishes the upper limit of value.

The administrative judge finds it inappropriate to adopt the assessor's revised cost approach without an additional adjustment. The administrative judge finds Mr. Hammond testified that although an alternative user would consider 40-foot ceiling heights superadequate, he did not make a deduction for functional obsolescence due to the difficulty in quantifying the loss in value. The administrative judge finds that a proper cost approach

³ Exhibit 2 has a column entitled "adjusted price per square foot," but it is unclear what adjustments were made or the basis for the adjustments.

accounts for incurable functional obsolescence caused by a superadequacy. Ironically, the administrative judge finds that one authoritative text utilizes the following example in discussing this concept:

A superadequacy is often difficult to cure. Consider an industrial building with 24-foot ceiling heights where the market norm is 18-foot ceilings. The cost of a building with 24-foot ceilings is \$1.2 million whereas the cost of a building with 18-foot ceilings is \$1.0 million. The subject building costs \$5,000 more per year to heat and cool than comparable properties in the subject's market. The extra \$200,000 spent in the original construction on the extra six feet of ceiling height adds no value to the property and there is no reasonable cost to cure, so the superadequacy is incurable.

In this market, the higher ceiling would not be installed in a substitute property. Therefore, in the calculation of functional obsolescence, the amount entered as cost if installed new is zero.

...

Appraisal Institute, *The Appraisal of Real Estate* at 411 (12th ed. 2001).

The administrative judge finds that in certain circumstances an appraiser must rely on his or her own experience and judgment when the absence of sufficient market data makes it difficult or impossible to quantify something that obviously has a material impact on value. Rather than simply ignoring the loss in value attributable to the excessive ceiling height, the administrative judge finds that the preponderance of the evidence supports the application of a minimum of five percent (5%) additional depreciation to the buildings. The administrative judge finds no further depreciation warranted absent additional proof from the taxpayer.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$2,083,000	\$74,444,700	\$76,527,700	\$30,611,080

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:


1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of

the State Board and that the appeal “**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**”; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 15th day of February, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Cameron A. Moore
John C. Isbell, Assessor of Property